IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO. 5088 OF 2004

PETITIONER

Ali Raza, S/o Shri Abdul Azia Aged about 52 Years, Prop. Rajdhani Travels, Normal School Road, Bilaspur, Tah.& Distt Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS

1. Regional Transport Authority Chhattisgarh, Raipur (CG)
2. Secretary, Regional Transport Authority, Chhattisgarh, Raipur (CG)
3. Abdul Hakim, S/o Shri Hamid Ali, aged about 39 years, Kharasia Road, Ambikapur, Distt Surguja [Chhattisgarh]
4. State Transport Appellate Tribunal, Chattisgarh, Raipur

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

(81)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.5088 of 2004

Ali Raza

- Versus -

Regional Transport Authority, Chhattisgarh & others

POST FOR ORDER ON 5th AUGUST, 2005

Sd/-
L.C. Bhadoo
Judge
5-8-2005

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.5088 of 2004

Ali Raza

- Versus -

Regional Transport Authority, Chhattisgarh & others

Present: -

Mr. Sanjay Kumar Agarwal, Advocate: For the petitioner.

Mr. Y.S. Thakur, Govt. Advocate: For respondent No.1 & 2

Mr. B.K. Rawat, Advocate: For respondent No.4

ORDER

(Passed on 5th August, 2005)

L.C. BHADOO, J.

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India questioning the legality, propriety and correctness of order dated 19.9.2003 passed by respondent No.1-Regional Transport Authority, Chhattisgarh, Raipur whereby respondent No.1 has granted a regular stage carriage permit to respondent No.3 on the route Bilaspur to Ambikapur & back and also the order dated 18.11.2004 passed by respondent No.4-State Transport Appellate Tribunal, Chhattisgarh, Raipur confirming the order passed by respondent No.1.

2. Brief facts leading to filing of this writ petition are that respondent No.3 herein applied for grant of a regular stage carriage permit on the route Bilaspur to Ambikapur via Ratanpur, Pali, Katghora,Tara & Udaipur, upon which a notice inviting objections was affixed on the notice board on 10.2.2003. Thereafter, the said application was kept for hearing before the Regional Transport Authority, Chhattisgarh, Raipur on 25.3.2003 in which the petitioner herein as well as one Shiv Kumar Singh, who is a regular permit holder on the route

Bilaspur to Balco, had filed their objections. The objection of said Shiv Kumr Singh was regarding timings on the ground that his vehicle's departure time from Bilaspur is 18.45 pm, whereas, proposed timing of the applicant is 18.25 pm, thus, there is only 20 minutes difference between the two and another objection was that in both the permits 85 km route is common, therefore, he will suffer financial loss. The objections raised by said Shiv Kumar Singh was rejected by respondent No.1 on the ground that permit of the Objector is for Bilaspur to Balco, whereas, the applicant has applied for permit from Bilaspur to Ambikapur. A similar objection was raised by the petitioner herein that departure timing of the petitioner's vehicle from Ambikapur is 5.00 am, whereas, the applicant has proposed the departure time from Ambikapur as 4.25 am, which is 35 minutes ahead of the petitioner's timing and on account of this narrow gap between the two, he will also suffer financial loss. This objection was also rejected by the authority on the ground that difference between the two is 35 minutes, therefore, objection is not valid and 35 minutes difference between two permits is sufficient. Aggrieved by the order of respondent No.1 the petitioner herein preferred a revision petition before respondent No.4 and the same was dismissed by respondent No.4 vide impugned order dated 18.11.2004.

3. I have heard the learned counsel for the parties.

4. Shri Sanjay K Agarwal, learned counsel for the petitioner argued that the permit has been granted to respondent No.3 in violation of Sections 70, 71 & 72 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") and the authorities have not considered the speed of vehicle, which is a relevant factor for consideration of a permit. He further argued that the authorities have also not considered the element of public interest and that the time gap between the two permits is so small that it will be uneconomical to the petitioner and it is not going to serve the public interest also.

5. On the other hand, Shri B.K.Rawat, counsel for respondent No.3 submitted that the permit was granted to respondent No.3

after complying with the provisions of Sections 70, 71 & 72 of the Act of 1988 and as far as the question regarding consideration of speed is concerned, the petitioner did not raise this objection before the Regional Transport Authority or State Transport Appellate Tribunal, therefore, it cannot be raised under a writ jurisdiction for the first time. He further submitted that as far as time-gap is concerned, respondent No.1 after considering the relevant factors, traffic etc on the route has granted the permit, therefore, he submits that the writ petition is devoid of merit and liable to be dismissed.

6. Having heard learned counsel for the parties, I have perused the record.

7. It is true that objection regarding non-consideration of speed of vehicle was not raised by the petitioner before any authority and it is being raised for the first time, therefore, it cannot be allowed. The petitioner ought to have raised this objection before respondent No.1 in order to consider the objection taking into consideration the ground situation. Even otherwise, as far as the speed of vehicle is concerned, the permit, which has been granted to respondent No.3, and timings are identical to the petitioner's permit, therefore, it cannot be said that the speed factor has not been taken into consideration by the authority.

8. Now coming to the question that time-gap between the petitioner's permit & respondent No.3's permit is only 35 minutes, as such same will be uneconomical for the petitioner. This factor has also been considered by both the authorities, therefore, I do not find any substance in this count also and as such, the judgment cited by learned counsel for the petitioner reported in **AIR 1999 Madhya Pradesh 1** between **Vivek Dwivedi and another V Prem Narain and others** is of no help to the petitioner, for the reason that in this judgment it has been held that "*...the transport authority has to consider the need having regard to the passenger traffic between the two places. The adequate transport facilities, if any, between the intermediate stations should not be regarded as conclusive of*

the matter and the Regional Transport Authority has to consider at the time of fixing the time schedule the interests of the travelling public in relation to the entire route between the two terminii. The timings are given to facilitate the travellors and not for favouring one operator at the expense of the other. Speed limit is only one of the factors for fixing the time table and the Regional Transport Authority must consider the time table filed by all the affected operators." In the present case, before the RTA or STAT no such point was raised by the petitioner that the time schedule has been fixed without taking into consideration the facility to the travellers, the only objection of the petitioner was that the time-gap between the two is so small and it will be uneconomical for the petitioner, whereas, in the authority cited by counsel for the petitioner the Hon'ble High Court of Madhya Pradesh has stressed on the point that time table has to be fixed with reference to the object of seeing the interests of the general public and cannot be treated as confined to the competing interests of the permit holders, but in the present case, the petitioner has not raised the objection to the effect that the timing was not in the interest of the general public. As such, there is no material on record which indicates or through which an inference can be drawn that while fixing the timings the general public interest was not taken into consideration.

9. In the matter of **Mithilesh Garg etc. etc. Vs. Union of India and others etc. etc.** reported in **AIR 1992 Supreme Court 443** the three Judges Bench of the Hon'ble Apex Court while considering the provisions of amended Act of 1988 observed that "*...the procedure for grant of permit under the new Act has been liberalized to such an extent that an intended operator can get a permit for asking irrespective of the number of operators already in the field.*" The Court also held that "*...more operators mean healthy competition and efficient transport system. Overcrowded buses, passengers standing in the aisle, persons clinging to the bus-doors and even sitting on the roof-top are some of the common sights in this country. It is therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board*

the vehicle of their choice and patronize the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits." After coming into effect of the Act of 1988 the paramount consideration for the authority is to ensure the efficient and convenient transport service for the general public and this point was never raised by the petitioner before both the authorities that the timing fixed by respondent No.1 while granting permit to respondent No.3 the interest of general public has not been taken into consideration, the petitioner's objection throughout was that time gap of 35 minutes between the petitioner's permit and respondent No.3's permit will be detrimental to the petitioner's interest, as the same is uneconomical, which has already been answered by the both the authorities.

10. In view of the foregoing discussion, the petitioner has not been able to make out a case for interference of this Court under Article 226/227 of the Constitution of India and it cannot be held that the impugned orders have been passed by the authorities without taking into consideration the relevant facts necessary for grant of a permit. The petitioner has not been able to point any illegality or material irregularity committed by respondent No.1 & 4 while passing the impugned orders.

11. In the result, the petition has no force, same is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
L.C. Bhadoo
Judge
5-8-2005

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